SUPPORTING BRIEF

Specification of Errors

The petitioner assigns the following errors in the record and proceedings of said cause:

The Court of Criminal Appeals of Texas committed fundamental error in affirming judgment of the trial court because

1) The ordinance in question is unconstitutional and void on its face and as construed and applied to petitioner because it unduly abridges and burdens, by excessive $1,825 annual license tax, her rights of freedoms of speech, press and worship of Almighty God, contrary to the First and Fourteenth Amendments to the United States Constitution.

2) Article 53 of the Code of Criminal Procedure of Texas, 1925, as construed and applied by the Court of Criminal Appeals of Texas, unduly denies petitioner her right to the inalienable and inherent writ of habeas corpus, in violation of the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

ARGUMENT

Invalidity of the Ordinance

We submit that the validity of the ordinance of the City of Comanche is not controlled by the case of *Jones* v. *City of Opelika,* supra, because here a $5 daily tax, or $1,825 annual tax, is required as a condition precedent to the exercise of constitutional rights; therefore, the "fees" are not small, but are "a substantial clog upon activities of the sort here involved". (*Jones* v. *City of Opelika,* supra) We still contend that this requirement that the license tax be assailed is a ridiculous and burdensome requirement and nullifies the right to make the Constitution a defense. See motion for rehearing in *Jones* v. *City of Opelika,* supra, and petition for writ of certiorari in *Busey* v. *District of Columbia,* now filed with this Court.

The validity of this sort of law was argued as exhaustively and extensively as it is possible to do in the briefs, reply briefs and *amicus curiae* briefs filed in the cases styled *Jones* v. *City of Opelika,* etc., supra, and reference is here made to same. The fallacy of the Court's opinion is clearly pointed out in the motion for rehearing filed in *Jones* v. *City of Opelika,* supra, and reference is here made to such.

Similarly the invalidity of this sort of license tax law is discussed in the foregoing *Busey* v. *District of Columbia* petition for certiorari and reference is made to such; see pages 13 to 22 of such petition.

It is interesting to note that the majority opinion in *Jones* v. *City of Opelika,* supra, entirely overlooks and ignores the well known struggle for freedoms of worship and press under the "stamp tax" laws of England. The freedom of such rights means a freedom from burdensome taxation as well as from censorship, but a contrary statement appears in the majority opinion (*Jones* v. *City of Opelika,* 62 S. Ct. 1231), "It is prohibition and unjustifiable abridgement which is interdicted, not taxation." The majority opin-

ion says that it is difficult for them to see in the Bill of Rights a shadow of prohibition of the exercise of such freedoms in taxation thereof. Those who wrote the Bill of Rights had in mind specifically the stamp taxes to safeguard against in the Bill of Rights, when the words of the First Amendment were written, for they had shortly before engaged in a bloody rebellion to throw off the burden of the stamp taxes.[10] Those who participated in the *Jones* v. *City of Opelika* case could easily refresh their memory of this matter by referring to the words of the lately deceased Mr. Justice Sutherland, in *Grosjean* v. *American Press Co.*, 297 U. S. 233, 243-249, where an excellent short summary of the historical background of burdensome and prohibitory taxes on freedom of the press is reviewed.

The license tax provided in this case cannot be distinguished from the stamp taxes; as a matter of fact it is even more burdensome and objectionable. Therefore it is difficult for us to see how the majority in the *Jones* case can say that taxation of this sort was not a prohibitive burden upon such freedoms, safeguarded against by the Bill of Rights.

It cannot be contended that this is one of the ordinary forms of taxation to support the government such as that contemplated in *Associated Press* v. *N.L.R.B.*, 301 U. S. 103, 130, 141. The greater the number of distributors in a city, the greater the tax. The greater the tax is made, the greater the burden becomes. In other words, the government must depend for support upon taxation of the privileges and rights that it was established to protect. To sustain this tax

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[10] See *Bridges* v. *California*, 314 U. S. 252, where this Court said: "No purpose in ratifying the Bill of Rights was clearer than that of securing for the people of the United States much greater freedom of religion, expression, assembly, and petition than the people of Great Britain had ever enjoyed. . . . Ratified as it was while the memory of many oppressive English restrictions on the enumerated liberties was still fresh, the First Amendment cannot reasonably be taken as approving prevalent English practices. On the contrary, the only conclusion supported by history is that the unqualified prohibitions laid down by the framers were intended to give to liberty of the press, as to the other liberties, the broadest scope that could be countenanced in an orderly society."

would be the same as saddling a giant upon a small and helpless beast of burden; the disastrous result is obvious. It seems that the government, federal and states and their subdivisions, should be strong enough to protect themselves by confining taxation activities to the ordinary form of taxation without reaching out to destroy the very life of the people and their inherent fundamental rights established by the Bill of Rights, which the government and its various employees, judicial and otherwise, are sworn servants of the people to protect.

The First Amendment prohibits the abridgment of these freedoms. "Abridge" means to *shorten, curtail* or *reduce,* and comes from the same root word as *abbreviate.* The word "abridge" does not mean *destroy, forbid, prohibit* or *prevent.* The Congress and the states may not pass, enact or enforce any law which in any way reduces or burdens such freedoms. In order to show the ordinance here to be invalid, it is not necessary to establish that the ordinance denies, destroys or prohibits freedoms of speech, press and worship. It is sufficient merely to show that the freedoms are burdened.

The First and Fourteenth Amendments place freedom of press and of worship in a favored position and give to them a status not accorded to commercial enterprises of various sorts. The newspapers have been recognized by this Court for special favors because of the special contribution they make to the public welfare. *United States ex rel. Milwaukee Social Democratic Publishing Co.* v. *Burleson,* 255 U. S. 407, 410. Liberty of circulation is as essential to freedom of press as is liberty of publication; without circulation, publishing is of no value. *Ex parte Jackson,* 96 U. S. 727, 733; *Grosjean* v. *American Press Co.* 297 U. S. 233, 250-251; *Lovell* v. *City of Griffin,* 303 U. S. 444.

Taxation has constantly been one of the prohibitive methods employed to abridge and burden freedoms of press

and of worship; and since the license taxes of the sort here involved greatly restrict circulation and are therefore burden upon freedom of the press, it would seem that the Court in the *Jones* case misapprehended the scope of the limitations contained in the First Amendment. Those limitations are not confined to prohibitive laws which abridge and burden, by taxation or any other device, those freedoms even though such laws do not completely destroy them.

In regard to the *Grosjean* case, supra, the taxing act there involved was held unconstitutional on the SOLE GROUND that it was a restriction upon circulation on the newspapers taxed and was held to be an abridgment of the freedom of the press. This Court expressly limited its opinion on this question and stated that it did not have to pass on any question of discrimination. As a matter of fact the unfair discrimination ground urged in the *Grosjean* case was ignored by this Court. We assert that the license tax here involved cannot be distinguished from the tax law involved in the *Grosjean* case. Furthermore, the license tax law here is identical with the license tax laws declared invalid under the commerce laws in more than thirteen cases cited in *McGoldrick* v. *Berwind-White Co.*, 309 U. S. 33, 55-57. It should be kept in mind that the construction placed on this ordinance by the Texas courts so as to include literature containing information and opinion within the terms "goods, wares, merchandise or other articles" makes the same invalid on its face because it is a direct burden upon freedom of the press in violation of the First and Fourteenth Amendments and therefore it was the duty of the Court of Criminal Appeals, under the prevailing practice of Texas, to take jurisdiction on the application for writ of habeas corpus. Since the undisputed evidence was that this was petitioner's way of worship, then the ordinance as applied is unconstitutional because it unlawfully abridges her right of freedom to worship Almighty God. Denial of the right of writ of habeas corpus in such circumstances, when at the same time the writ is allowed where the ordinance is unconstitu-

tional on its face, results in judicial discrimination of the worst kind in violation of the due process and equal protection clauses of the Fourteenth Amendment. The refusal of the Court of Criminal Appeals to take jurisdiction cannot be justified on any non-federal ground.

Discriminatory Denial of Habeas Corpus Process

In Texas the writ of habeas corpus is declared to be the principal bulwark of human liberty in that State. *Ex parte Calhoun,* 91 S. W. 2d 1047.

The Texas courts also hold that the writ of habeas corpus is available to any person restrained of his liberty, regardless of the offense charged. The proceedings for habeas corpus is independent of the offense charged. *McCormick* v. *Sheppard,* 86 S. W. 2d 213.

Although habeas corpus is a collateral attack upon prior judicial proceedings questioned therein (*Ex parte Travis,* 123 Tex. 480, 73 S. W. 483, 489), nevertheless if the ordinance is unconstitutional the proceedings thereunder are absolutely void.[11]

The Code of Criminal Procedure of Texas provides that one convicted in the recorder or corporation court of a city or in one of the justice of the peace courts may appeal to the County Court where a trial de novo is had. If at the trial in the County Court he is fined in a sum not to exceed $100, no further right of appeal is available in the courts of Texas on such questions as procedural errors, perjured testimony or lack of and insufficiency of evidence. However, one thus convicted under a law which has been repealed or which does

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[11] *Ex parte Smith,* 122 Tex. C. R. 534, 56 S. W. 2d 874; *Ex parte Curtis,* 98 S. W. 2d 195; *Ex parte Cox,* 53 Tex. C. R. 240, 101 S. W. 369; *Ex parte Cain,* 56 Tex. C. R. 538, 120 S. W. 999; *Ex parte Farnsworth,* 61 Tex. C. R. 342, 135 S. W. 535; *Ex parte Patterson,* 42 Tex. C. R. 256, 58 S. W. 1011; *Ex parte Battis,* 40 Tex. C. R. 112, 48 S. W. 513; *Ex parte Neill,* 32 Tex. C. R. 275, 22 S. W. 923; *Ex parte Garza,* 28 Tex. C. R. 381, 13 S. W. 779; *Ex parte Pierce,* 125 Tex. C. R. 470, 75 S. W. 2d 264.

not apply to his conduct, or if the law under which he is convicted is unconstitutional, he is provided a remedy under the procedure of Texas by way of writ of habeas corpus on the ground that he is illegally restrained of his liberty. The application for writ of habeas corpus can be made directly to the Court of Criminal Appeals as an original proceeding. *Ex parte Roquemore,* 131 S. W. 1101; *Ex parte Lewis,* 45 Tex. C. R. 1, 73 S. W. 811; *Ex parte Baker,* 78 S. W. 2d 610; *Ex parte Patterson,* 58 S. W. 1011, 42 Tex. C. R. 256.

This remedy is available even though the one convicted in the corporation or justice court does not exhaust his remedies of appeal to the County Court. *Ex parte Roquemore,* supra; *Ex parte Lewis,* 73 S. W. 811; *Ex parte Baker,* supra; *Ex parte Patterson,* supra; *Ex parte Jarvis,* 3 S. W. 2d 84.

The holding of the Court of Criminal Appeals that the remedy of habeas corpus is not available conflicts directly with decisions of that court that have not been overruled. See *Ex parte Roquemore,* supra, where the court said:

> "We are met at the threshold of the case with the suggestion by our able assistant attorney general that the writ of habeas corpus cannot apply in this character of proceeding; that it is sought merely as a method of appeal or supersedeas, and under the authority of the cases of *Ex parte Schwartz,* 2 Texas App. 448, 17 S. W. 1076, and the still later case of *Ex parte Cox,* 53 Tex. Cr. Rep. 240, 101 S. W. 369, cannot be sustained, and that the judgment of the inferior court can only be attacked by writ of habeas corpus for such illegalities as rendered them void. . . .
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> "That these general rules obtain there can be no sort of question, but, as we believe, they have no application to the case here. The sole matter in controversy in this case is as stated in the agreed statement of facts . . . or whether the facts heretofore agreed upon make

an offense denounced by article 199. . . . So that we are confronted with the question as to whether in this state it is unlawful for one, the proprietor of a baseball park, to permit a game to be played therein on Sunday, or to cause a game to be played on Sunday therein where an admission charge is made. If there is no such law, then manifestly no offense is charged, and none could be charged upon any state of case made by this record, or could be predicated upon any state of facts reasonably applied to the condition of the relator.

[A discussion of the construction of the particular statute follows with the conclusion that the acts of relator were not included within the terms thereof.]

" . . . We are not therefore concerned here with the issue or question as to whether the legislature could enact a law prohibiting baseball on Sunday, but rather with the question as to whether they have so enacted. . . .

"We have not felt it necessary, and indeed it would be out of place, to express any view as to whether baseball should be prohibited on Sunday, but have contented ourselves with deciding that under the statute as it now stands it has not been prohibited. Believing that the law under which relator is sought to be held does not make the act set forth an offense, it is ordered that he be, and is hereby discharged."

See also the case of *Ex parte Wall,* 91 S. W. 2d 1065, where the Court of Criminal Appeals said:

"As the matter appears here, there is an absolute absence of proof from any witness or from any source that the [relator] appellant had committed an offense. In the absence of proof or at least evidence, that he committed an offense, the appellant's detention cannot be sustained."

and writ of habeas corpus was issued by that court.[12] See also *Ex parte Meador,* 248 S. W. 348, *Ex parte Degener,* 17 S. W. 1111, 1115, *Ex parte Kearby and Hawkins,* 34 S. W. 635, 962. See also cases where the fine did not exceed $100 on trial de novo in the County Court and the writ was nevertheless issued on appeal by the Court of Criminal Appeals.[13]

This case is controlled by the case of *Smith* v. *O'Grady,* 312 U. S. 329, where Mr. Justice Black, speaking for this Court, said:

> " . . . before examining the pleadings in order to determine whether the allegations showed a deprivation of federally protected rights, it is necessary to consider a preliminary contention urged by the state. The tenor of this contention is that under Nebraska law petitioner could not have his asserted federal rights determined in habeas corpus proceedings. . . . Nor can we lightly assume that Nebraska affords no corrective process for one who is imprisoned under a judgment rendered in violation of rights protected by the federal Constitution. That Constitution is the supreme law of the land, and 'Upon the state courts, equally with the courts of the Union, rests the obligation to guard and enforce every right secured by that Constitution.'[14] . . . Because of this, and because a contrary conclusion would apparently mean that Nebraska provides no judicial remedy whatsoever for petitioner even though he can show he is imprisoned in violation of procedural safeguards commanded by the federal

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[12] Article 116 of the Code of Criminal Procedure (1925) provides: "Every provision relating to the writ of habeas corpus shall be most favorably construed in order to give effect to the remedy, and protect the right of the person seeking it."

[13] *Ex parte Slawson,* 141 S. W. 2d 609, 610; *Ex parte Jones,* 81 S. W. 2d 706; *Ex parte Spelce,* 119 S. W. 2d 1033, 1037; *Ex parte J. D. Carter,* 156 S. W. 2d 986 (Jehovah's witness, companion case to this in the C. C. A.,); *Ex parte Faulkner,* 158 S. W. 2d 525; *Ex parte Baker,* 78 S. W. 2d 610; *Ex parte Patterson,* 58 S. W. 1011, 42 Tex. C. R. 256.

[14] *Mooney* v. *Holohan,* 294 U. S. 104, 113, 55 S. Ct. 340, 342, 98 A. L. R. 406.

Constitution, we are unable to reach the conclusion that habeas corpus is unavailable to him under Nebraska law.[15] . . .

" . . . If petitioner can prove his allegations the judgment upon which his imprisonment rests was rendered in violation of due process and cannot stand."[16]

The decision by the Court of Criminal Appeals of Texas is an arbitrary denial of the inherently secured right of habeas corpus. "The right to . . . the privilege of the writ of habeas corpus, are rights of the citizen guaranteed by the Federal Constitution." (Justice Roberts' opinion in *Hague* v. *C. I. O.*, supra, *Slaughter House Cases*, supra, and *Corfield* v. *Coryell*, supra). The evasion of determination of the federal questions presented to the Court of Criminal Appeals cannot be based on an adequate and independent non-federal ground.

In the case of *People of New York ex rel. Bryant* v. *Zimmerman*, 278 U. S. 63, 70, 71, this Court in dealing with a similar disposition of a federal question, and holding that the non-federal ground relied on was not adequate, stated:

"Our jurisdiction to review the decision is questioned also because of the nature of the case, it being a proceeding in habeas corpus brought to obtain the discharge of one who is held in custody to answer a charge of violating a state statute alleged to be invalid by reason of its conflict with the constitution of the United States. But we think our jurisdiction is in this regard so well established by prior decisions and long continued practice that it is not debatable. . . .

"The proceedings before us was not brought in an-

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[15] *Newcomb* v. *State*, 129 Neb. 69, 261 N. W. 348.

[16] See also: *Mooney* v. *Holohan*, 294 U. S. 104, 114, and *Moore* v. *Dempsey*, 261 U. S. 86, 90. Compare: *Yick Wo* v. *Hopkins*, 118 U. S. 356, 373-374; *Herndon* v. *Lowry*, 301 U. S. 242; *Walker* v. *Johnston*, 61 S. Ct. 574, 579, 312 U. S. 275; *Johnson* v. *Zerbst*, 304 U. S. 458, 466; *Bowen* v. *Johnston*, 306 U. S. 19, 26; *American Jurisprudence*, Vol. 25, pages 148, 152, 179.

> tagonism to the established practice of the state, but in entire keeping with that practice as confirmed by local statutes. . . .
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> "We are accordingly of opinion that the case and the judgment therein are of such a nature that we have jurisdiction to review the latter."

In the case at bar the habeas corpus proceedings and appeal to the Court of Criminal Appeals was brought in harmony and in entire keeping with the practice established and confirmed by the Court of Criminal Appeals of Texas. Therefore the judgment is of such a nature as to give this Court jurisdiction.

See the case originating in Texas decided by this Court, styled *Love et al.* v. *Griffith, et al.*, 266 U. S. 32, where this Court stated:

> "When as here there is a plain assertion of federal rights in the lower court, local rules as to how far it shall be reviewed on appeal do not necessarily prevail.[17] Whether the right was denied or not given due recognition by the Court of Civil Appeals is a question as to which the plaintiffs are entitled to invoke our judgment."[18]

The non-federal question is intermingled by the Court of Criminal Appeals with the federal question. That court holds that if the ordinance is unconstitutional on its face they have jurisdiction to consider the writ of habeas corpus, but if it is unconstitutional as construed and applied they do not have jurisdiction. This situation of itself so entangles the federal question as to give jurisdiction to this Court to consider even the *so-called* non-federal question, as well as the federal questions presented.

We insist that in view of the prior holdings of the Court of Criminal Appeals their decision in the case at bar is a

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[17] *Davis* v. *Wechsler*, 263 U. S. 22, 24.

[18] *Ward* v. *Love County*, 253 U. S. 17, 22.

bald, outright evasion and subterfuge and an arbitrary holding for the sole purpose of suppressing the civil rights of the petitioner and it is a violation of the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution. *One need only consider the strong, reasonable and compelling dissenting opinion of Judge Graves of the Court of Criminal Appeals in this case to reach that conclusion.* R. 29.

In this, as well as companion cases of *Ex parte Largent* and *Ex parte Killam* in the Court of Criminal Appeals (also brought to this Court as companion cases on petitions for writs of certiorari) it is significant that the Court of Criminal Appeals did not dismiss the appeal for want of jurisdiction, as it would have done under the prevailing practice, had that court seriously believed that it did not have jurisdiction. If an appellate court does not have jurisdiction, as contended by the Court of Criminal Appeals, it would be obligated to sustain the motion to dismiss the appeal made by the State's Attorney in these cases. On the contrary, that court ignored the State's Attorney's motion to dismiss and affirmed the judgments of the trial courts in the three cases, remanding the petitioners to custody, thereby showing that the Court of Criminal Appeals considered the cases on the merits and that the *so-called* non-federal question is absolutely colorless and fictitious. The trial courts decided the cases on the merits and held the ordinances constitutional and found petitioners had not been denied their constitutional rights. The Court of Criminal Appeals affirmed the holding of the trial courts, therefore it cannot be said that the disposition made of these three cases is based on an adequate non-federal question.

On the question of depriving petitioner of her fundamentally secured right of habeas corpus before the Court of Criminal Appeals under Point Three of the Points Relied On for Appeal, she contended that habeas corpus was the proper remedy and that the Court of Criminal Appeals had jurisdiction. (R. 27-28) Since the Court of Criminal Appeals relied on Article 53 (C. C. P. of Texas) for the first

time, petitioner for the first time attacked this Article as being unconstitutional in her motion for rehearing. This is timely raising of that particular federal question. In *Brinkerhoff-Faris Trust and Savings Co.* v. *Hill,* 281 U. S. 673, this Court said:

> "The plaintiff seasonably filed a petition for a rehearing in which it recited the above facts and asserted, in addition to its claims on the merits, that, in applying the new construction of Article 4 of Chapter 119 to the case at bar and in refusing relief because of the newly found power of the Commission, the court transgressed the due process clause of the Fourteenth Amendment. The additional federal claim thus made was timely, since it was raised at the first opportunity.[19] The petition was denied without opinion."

To permit the Court of Criminal Appeals of Texas to adversely, arbitrarily and with discrimination, escape the responsibility imposed upon it to protect the federal constitutional rights of its citizens within the border of that State by adopting arbitrary and inconsistent rules to apply to one class of citizens while employing a different set of rules or procedure with another class similarly situated, thereby denying the machinery of the courts to Jehovah's witnesses, is to greatly increase the burden of this Court. If the Court of Criminal Appeals of Texas is to thus escape its responsibility, then it makes necessary direct appeals from the County Courts of 254 Texas counties to this Court, thus greatly and unnecessarily increasing the burden of this Court.

It is an unwritten rule in the Texas trial courts that the determination of any federal or constitutional question is the primary duty of the Court of Criminal Appeals or the

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[19] *Missouri ex rel. Missouri Ins. Co.* v. *Gehner,* 281 U. S. 313. See further discussion of the inadequacy of the non-federal question involved in this case at pages 674, 675, 679 and 682 of the above *Brinkerhoff* case.

Supreme Court of Texas. When federal or constitutional questions are raised in the trial court, the trial judge promptly proceeds to overrule the contentions with the statement, 'Those questions must be determined by the Court of Criminal Appeals. I will hold the law constitutional. You can take that question to the Court of Criminal Appeals.' The Court of Criminal Appeals expressly shifts its responsibilities to the federal courts in the following language, "We have not said that appellant has no right to resort to the federal courts for relief on the federal question." See opinion on motion for rehearing in companion *Killam* case. R. 32, and *Killam* Record, pages 12, 13.

The resort to the remedy of habeas corpus in the District Courts of the United States is particularly circumscribed by the rules of this Court, which require that all remedies of appeal from the convictions be first resorted to in the state courts and from said state courts it is further the requirement of this Court, as a condition precedent to the writ of habeas corpus in federal courts, that a petition for certiorari or appeal be taken from the state courts to this Court. Thus it is manifest that habeas corpus in federal courts is not appropriate or adequate and the rule announced by the Court of Criminal Appeals would unduly burden this Court in matters coming from Texas and would require petitions for certiorari and appeals in every judgment of conviction entered against Jehovah's witnesses in 254 county courts of Texas.

If this situation that one can be incarcerated, resulting from a conviction in violation of his constitutional rights under an ordinance where the fine is less than $100, be permitted to stand, all the cities of Texas will be deliberately encouraged to pass ordinances, and judges and juries of the trial courts to deliberately impose fines of less than $100, and thus avoid the possibility of review, where protection of constitutional rights are denied by the conviction.

Suppose some local official did not like the activity of his opposing political candidate and his supporters in distrib-

uting literature which exposed corruption of such local official; the opposing candidate could doubtless be repeatedly arrested for "peddling" literature and fined not to exceed $100, and thus the opposing candidate and his representatives would be "interned" for the duration of the political campaign or longer. Unless such a person paid out thousands of dollars for repeated petty fines imposed under $100, he would be compelled to linger in jail while his enemies unjustly hoodwinked the people. Such an intolerable condition would well result to anyone in Texas who dared to exercise his political rights in a hotly contested political campaign. Anyone thus suppressed and who was unwilling or unable financially to pay the fines imposed would be compelled to take repeated appeals directly to the Supreme Court of the United States or else "lay it out" in jail; and, upon being released he could again be arrested, fined and incarcerated, repeatedly, until he spent his entire life in jail and all the while be denied his constitutional right of liberty. One's property and money do him little or no good, and bring him little or no joy, if he is incarcerated behind four walls in violation of his civil rights.

If the Texas courts can be permitted to turn a deaf ear to such who cry for help, and refuse to hear and consider the constitutional rights of one until he has been fined more than $100, such condition will lead to intolerable results that find comparison only in the lands dominated by unadulterated Fascist and Nazi rule.

The thoughtful consideration of this petition for writ of certiorari leads to a different result. If the argument is carefully followed, the conclusion is inescapable that this Court has jurisdiction and that the petition for certiorari should be granted and the judgment and decision of the Court of Criminal Appeals should be reversed and set aside and held for nought.

It is submitted that this case is one calling for the exercise by this Court of its supervisory powers under 240(a) of the Judicial Code, 28 U. S. C. A. 347(a) and Rule 38,

par. 5, of this Court. To that end this petition for writ of certiorari should be granted so as to correct the errors complained of committed by, and the judgments rendered by, the Court of Criminal Appeals and the trial courts, against petitioner.

Respectfully submitted,

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